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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ansmann et al.
Appl. No. : 09/931,670
Filed : 08/16/01
Title : COSMETIC PREPARATIONS

Grp./A.U. : 1616
Examiner : D. Jones

Docket No. : H 2674A PCT/US

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Honorable Commissioner for Patents
Washington, DC 20231

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This paper is in response to the Examiner's Restriction Requirement dated September 5, 2002 in the instant application.

The Examiner has indicated that the claims are directed to the following groups of inventions: group (I) claims 11-14 and 18-22 drawn to a compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and a fatty acid N-alkyl polyhydroxyalkyl emulsifier, classified in class 424, subclass 401; group (II) claims 11-13, 15 and 18-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and an alkyl ether sulfate emulsifier, classified in class 424, subclass 401; and group (III) claims 11-13 and 16-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer and a betaine emulsifier, classified in class 424, subclass 401.

The Examiner notes that inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation,

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different functions, or different effects, citing MPEP sections 806.04 and 808.01.

In response thereto, pursuant to the criteria outlined above, Applicant respectfully submits that the inventions of groups I-III are most definitely related, for the following reasons. First, they **ALL** possess the same mode of operation, i.e., they are **ALL** capable of being introduced/admixed into a cosmetic composition for the purpose of imparting a pearlescent appearance thereto **IN THE SAME WAY**. Second, they **ALL** perform the same function, i.e., impart a pearlescent appearance to a cosmetic composition **IN THE SAME WAY**. Finally, they **ALL** provide the same effect, i.e., **PEARLESCENCE**. Therefore, by employing the precise criteria cited by the Examiner for determining whether inventions are unrelated, i.e., MPEP 806.04 and 808.01, it is clear that the inventions are in fact related.

As for the reasoning employed by the Examiner, it has no bearing whatsoever on the criteria to be used for determining whether inventions are unrelated, as cited in MPEP 806.04 and 808.01.

Finally, the fact that each invention identified by the Examiner is classified in the **SAME CLASS AND SUBCLASS** further serves to evidence that the inventions are in fact related.

The requirement is thus respectfully traversed and reconsideration and withdrawal thereof is requested. However, in order to comply with the requirement of Rule 142, Applicant's are provisionally electing the invention of Group II, claims 11-13, 15 and 18-22, with traverse, for further examination on the merits.

The Examiner has also made the claimed invention subject to an election of species requirement stating that a specific dialkyl ether must be elected, along with a specific cationic polymer, along with a specific emulsifier. Applicant respectfully submits that the election of species requirement is improper for the following reasons.

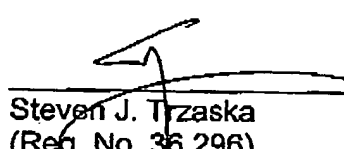
It is extremely well settled that in order for an Examiner to make an election of species requirement under 35 U.S.C. § 121, the Examiner must show that said invention

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pertaining to each species is "independent and distinct". The Examiner, however, has failed to make such a showing or, for that matter, such an allegation. Unless and until the Examiner can show that some or all of the species of dialkyl ether represented by formula I are independent and distinct, which Applicant submits the Examiner **CANNOT**, then the election of species requirement is deemed to be improper. The same holds true for those species covered by the formulas for the cationic polymer, and the various emulsifiers.

The requirement is thus respectfully traversed and reconsideration and withdrawal thereof is requested. However, in order to comply with the requirement of Rule 142, Applicant's are provisionally electing distearyl ether, cationic cellulose derivatives, and alkyl ether sulfates which read on claims 11, 12, 15 and 18-22, with traverse, for further examination on the merits.

Respectfully submitted,



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